

E-filed on 2/2/06

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SUN MICROSYSTEMS, INC., et al.,

Plaintiffs,

v.

SEAORIA SIGNARS LEMA, et al.,

Defendants.

Case Number C 04-04968 JF

ORDER (1) GRANTING MOTION
FOR SUMMARY JUDGMENT OF
SEAORIA SIGNARS LEMA, AND (2)
DENYING CROSS-MOTION FOR
SUMMARY JUDGMENT OF DAVID
THOMAS LEMA, GABRIELLE LYN
LEMA, PAUL PHILLIP LEMA,
PAULA SARAH LEMA, AND
TOMICA ANN PARHAM-LEMA

[Docket Nos. 60 and 62]

On November 8, 2005, Defendant Seaoria Signars Lema (“Seaoria”) filed a motion for summary judgment, asking the Court to declare her the sole beneficiary of the Sun Microsystems, Inc. (“Sun”) Tax Deferred Retirement Plan (“Plan”) of Michael H. Lema (“Decedent”). On December 29, 2005, Defendants David Thomas Lema (“David”), Gabrielle Lyn Lema (“Gabrielle”), Paul Phillip Lema (“Paul”), Paula Sarah Lema (“Paula”), and Tomica Ann Parham-Lema (“Tomica”) (collectively, “David et al.”) filed opposition to Seaoria’s motion for

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ORDER (1) GRANTING MOTION FOR SUMMARY JUDGMENT OF SEAORIA SIGNARS LEMA, AND (2) DENYING CROSS-MOTION FOR SUMMARY JUDGMENT OF DAVID THOMAS LEMA, GABRIELLE LYN LEMA, PAUL PHILLIP LEMA, PAULA SARAH LEMA, AND TOMICA ANN PARHAM-LEMA (JFLC1)

summary judgment. With their opposition, David et al. filed a cross-motion for summary judgment, asking the Court to declare that David et al., and non-moving Defendant Michael-Anthony Lema (“Michael Anthony”), are the valid beneficiaries of the plan.¹ Seaoria filed a reply in support of her motion for summary judgment and opposition to the motion of David et al. David et al. have not filed a reply in support of their cross-motion for summary judgment. The Court heard oral argument on January 20, 2006.

I. BACKGROUND

Decedent was a participant in the Plan and was eligible to designate a beneficiary or beneficiaries to receive, in the event of his death, payment of any portion of his Plan benefits that was not distributed prior to his death. The terms of the Plan state that “[i]f a married Participant designates someone other than his or her spouse as the Beneficiary with respect to any portion of his or her Accounts, shall be invalid unless the spouse consents to such designation.” Declaration of Karen E. Phillips (“Phillips Decl.”), Ex. B, p. 22. Valid spousal consent “shall be in writing, shall acknowledge the effect of the Participant’s election, shall specify the non-spouse Beneficiary being designated . . . and shall be witnessed by a Plan representative or notary public.” *Id.* When Decedent enrolled in the Plan in February 1989, he listed only his six children, Michael-Anthony, David, Gabrielle, Paul, Paula, and Tomica, as equal beneficiaries on his employee benefit plan beneficiary designation form. Seaoria’s Motion for Summary Judgment, Ex. A.² Decedent signed the form on February 6, 1989, Seaoria signed it on February

¹ Defendants David et al. did not file their cross-motion for summary judgment in compliance with Local Rules 7-1 and 7-2. The motion was not separately noticed or filed at least 35 days prior to the scheduled hearing. Civ. L.R. 7-1(a)(1) and 7-2(a). However, because the issues presented by the cross-motion for summary judgment are identical to those raised in Seaoria’s motion for summary judgment, the Court in its discretion will consider the two motions concurrently.

² Defendants Seaoria, David, Gabrielle, Paul, Paula, and Tomica stipulate to the authenticity of the employee benefit plan beneficiary designation form dated February 6, 1989.

1 9, 1989, and the Plan representative signed it on February 17, 1989. *Id.* The fact that neither a
 2 Plan representative nor notary public was present at the time Seaoria signed the form does not
 3 appear to have been discovered until at least July 2004.³

4 More than twelve years later, in July 2001, Decedent attempted to designate the Michael
 5 Henry Lema Trust (“Lema Trust”) as the beneficiary of his Plan benefits using Sun’s online Plan
 6 administration system. Phillips Decl., Ex. C. Plaintiffs assert that when he did so, the system
 7 generated a notification informing Decedent that, in order for his designation to be valid, he
 8 needed to provide the Plan with written spousal consent to the beneficiary designation. Plaintiffs
 9 also assert that the Plan never received such consent from Seaoria, and thus, under the terms of
 10 the Plan, this beneficiary designation is invalid as well. The Lema Trust is not a party to this
 11 action, and no party to this action argues that this 2001 beneficiary designation is valid.

12 Decedent died on November 14, 2001. Phillips Decl., Ex. D. At the time of his death,
 13 Decedent had benefits under the Plan that had not yet been distributed to him. As of April 7,
 14 2005, the value of the benefits was \$127,796.37. Phillips Decl. ¶ 12. Following a dispute among
 15 the Defendants, Plaintiffs Sun and Sun Microsystems, Inc. Tax Deferred Retirement Savings
 16 Plan brought this action in interpleader pursuant to the Employee Retirement Income Security
 17 Act of 1974 (“ERISA”) and Federal Rule of Civil Procedure 22 to determine who among the
 18 seven Defendants is or are the proper beneficiary or beneficiaries of Decedent’s account under
 19 the Plan. On June 9, 2005, this Court issued an order authorizing Plaintiffs to deposit benefits
 20 with the Court and discharging them from further liability.

21 Seaoria now argues that the February 1989 enrollment form is invalid, and moves for
 22 summary judgment to declare her the sole beneficiary of the Plan. David et al. argue that the
 23 February 1989 enrollment form is valid, and move for summary judgment to declare that they,
 24

25
 26 ³ Seaoria’s counsel has submitted a declaration that he called Plaintiffs’ attention to the
 27 potential invalidity of this designation in August 2004. Declaration of Jonathan M. Kaplan ¶¶ 2,
 28 3.

1 along with Michael-Anthony, are the sole beneficiaries of the Plan.⁴

2 3 II. LEGAL STANDARD

4 A motion for summary judgment should be granted if there is no genuine issue of
5 material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.
6 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). The moving party bears
7 the initial burden of informing the Court of the basis for the motion and identifying the portions
8 of the pleadings, depositions, answers to interrogatories, admissions, or affidavits that
9 demonstrate the absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S.
10 317, 323 (1986).

11 If the moving party meets this initial burden, the burden shifts to the non-moving party to
12 present specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e);
13 *Celotex*, 477 U.S. at 324. A genuine issue for trial exists if the non-moving party presents
14 evidence from which a reasonable jury, viewing the evidence in the light most favorable to that
15 party, could resolve the material issue in his or her favor. *Anderson*, 477 U.S. 242, 248-49;
16 *Barlow v. Ground*, 943 F.2d 1132, 1134-36 (9th Cir. 1991).

17 “When the nonmoving party has the burden of proof at trial, the moving party need only
18 point out ‘that there is an absence of evidence to support the nonmoving party’s case.’”
19 *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (quoting *Celotex Corp. v. Catrett*, 477
20 U.S. 317, 325 (1986)). Once the moving party meets this burden, the nonmoving party may not
21 rest upon mere allegations or denials, but must present evidence sufficient to demonstrate that
22

23
24 ⁴ Additional facts have been alleged in the pleadings, some of which are disputed. For
25 example, parties dispute whether Seaoria was living with Decedent in February 1989, when the
26 employee benefit plan beneficiary designation form was signed. They also dispute whether
27 Seaoria understood the financial impact of signing the waiver. None of these alleged facts has
28 been presented to the Court in the form of competent, admissible evidence. However, because
the Court concludes that the February 6, 1989 beneficiary designation is invalid as a matter of
law, these factual disputes are immaterial.

there is a genuine issue for trial. *Id.*

II. DISCUSSION

The Court concludes that the employee benefit plan beneficiary designation form dated February 6, 1989 is invalid because it did not inform Seaoria expressly of the effect of her waiver. ERISA allows a plan participant to “elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity,” but only if:

- (i) the spouse of the participant consents in writing to such election,
- (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and
- (iii) the spouse’s consent *acknowledges the effect of such election* and is witnessed by a plan representative or a notary public

29 U.S.C. §§ 1055(c)(1)(A)(I) and (c)(2)(A) (emphasis added).

California’s doctrine of substantial compliance, while it has been applied in the Ninth Circuit to a narrow category of ERISA cases, does not apply to the discrete issue of whether “the spouse’s consent acknowledges the effect of such election [of a non-spouse beneficiary].” In *Bankamerica Pension Plan v. McMath*, a case in which the plan participant failed to sign the beneficiary designation form, the Ninth Circuit applied the California doctrine of substantial compliance because that doctrine “on the facts of this case affects only the ultimate ownership of the benefits.” *Bankamerica*, 206 F.3d 821, 830 (9th Cir. 2000). The court reasoned that the connection with ERISA was too “‘tenuous, remote, or peripheral’ to trigger preemption.” *Id.* In contrast, the question of whether the spouse’s consent acknowledges the effect of electing a non-spouse beneficiary is not “tenuous, remote, or peripheral” to the substance and meaning of ERISA. Accordingly, federal common law applies. “Under ERISA, Congress has authorized the courts ‘to formulate a nationally uniform federal common law to supplement the explicit provisions and general policies set out in [the Act].’” *Security Life Ins. Co. of America v. Meyling*, 146 F.3d 1184, 1191 (9th Cir. 1998) (quoting *Peterson v. American Life & Health Ins.*

1 Co., 48 F.3d 404, 411 (9th Cir.1995)).

2 The employee benefit plan beneficiary designation form contains a single paragraph
3 concerning "Consent of Spouse," which states:

4 If you are married and wish to designate someone other than or in addition to your
5 spouse, your spouse must sign this form. Your spouse's consent will reduce the
6 potential for contested distribution of your account balance in the event of your
7 death.

8 Seaoria's Motion for Summary Judgment, Ex. A. There is nothing in this clause, or elsewhere in
9 the designation form, that expressly acknowledges the effect of electing a non-spouse
10 beneficiary, i.e., that the spouse is giving up his or her legal entitlement to the Plan participant's
11 benefits. The clause, like the clause at issue in *Lasche v. George W. Lasche Basic Retirement*
12 *Plan*, "does not describe or explain the right that the spouse is giving up (i.e. to get all the money
13 in the account)." *Lasche*, 870 F. Supp. 336, 338 (S.D. Fla. 1994), *aff'd*, *Lasche v. George W.*
14 *Lasche Basic Profit Sharing Plan*, 111 F.3d 863 (11th Cir. 1997).⁵

15 The 1989 designation also is likely invalid on the ground that Seaoria's signature,
16 waiving her spousal benefits, was not witnessed by a Plan representative or notary public.
17 Defendants David et al. argue that the California doctrine of substantial compliance applies to the
18 question of whether Seaoria's signature was valid. While the question of whether the California
19 doctrine of substantial compliance applies to this issue is closer than it is with respect to the
20 consent issue described above, the most reasonable reading of the Ninth Circuit's decision in
21 *BankAmerica* is that it does not. The issue of whether a spouse's signature, waiving his or her

22 ⁵ The clause at issue in *Lasche* reads as follows:

23 I am the spouse of the participant who made the beneficiary designation on this
24 form and I consent to it. I understand that if someone other than me has been
25 designated beneficiary, my consent means that I give up rights I may have under
26 the Plan and applicable law (other than rights I may later have as the survivor in a
27 joint annuity with the participant) to receive those amounts payable under the Plan
28 by reason of the participant's death to which I would otherwise be entitled if I
were the Participant sole beneficiary.

1 spousal benefits, was witnessed is an issue that touches on central policy intentions behind
2 ERISA. *See, e.g., Lasche*, 111 F.3d at 867 (“strict ERISA requirements designed to ensure a
3 valid waiver of a spouse’s retirement plan are consistent with the legislative policy of protecting
4 spousal rights”).

5 Even assuming that the California doctrine of substantial compliance does apply, there is
6 little support for the contention that the unwitnessed signature of Seaoria would meet the
7 requirements of that doctrine. In *BankAmerica*, the Ninth Circuit applied the following doctrine
8 of substantial compliance:

9 Where the insured makes every reasonable effort under the circumstances,
10 complying as far as he is able with the rules, and there is a clear manifestation of
11 intent to make the change, which the insured has put into execution as best he can,
equity should regard the change as effected.

12 *Bankamerica*, 206 F.3d at 867 (quoting *Pimentel v. Conselho Supremo De Uniao Portugeuza Do*
13 *Estado Da California*, 6 Cal.2d 182, 188 (1936)). While it is arguable that there was a “clear
14 manifestation of intent to make the change,” it far from clear that Decedent complied “as far as
15 he [was] able with the rules.” There is no argument or evidence suggesting that Decedent was
16 unable to obtain a signature by Seaoria that was witnessed by a Plan representative or a notary
17 public. In any event, having found that the February 6, 1989 employee benefit plan beneficiary
18 designation form is invalid on the ground that the spouse’s consent does not acknowledge the
19 effect of electing a non-spouse beneficiary, the Court need not decide whether the California
20 doctrine of substantial compliance applies to this issue, and, if it did, whether it would be
21 satisfied in this case.

22 Thus, because neither the February 6, 1989 beneficiary designation form nor the July
23 2001 online beneficiary designation is valid, Seaoria is the sole beneficiary of Decedent’s plan.

24 25 **III. ORDER**

26 Good cause therefore appearing, IT IS HEREBY ORDERED that Seaoria’s motion for
27 summary judgment is GRANTED. The cross-motion for summary judgment brought by David

1 and the other purported beneficiaries is DENIED.

2
3 DATED: February 2, 2006

4
5 
6 JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

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